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19 51 **File No.** Constitution II/51 (R)

Legal Depastment

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Subject:— Rules under the Constitution of India

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File No. Constitution II/51 (R)

Gen. 194 e.

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Legal Department.

Revised draft rules are sent herewith.

2. Preamble .- It has been revised to provide for supersession of the existing rules which continue to remain in force under article 313 of the Constitution.

3. Rule 8(3) in the Departments' draft. - This sub-rule is open to objection. Although the Constitution provides for a separate Secretariat of the Legislature, the members of the staff are persons who belong to the Civil Service of the State and their appointment will have to be made by the Governor. Article 187 no doubt empowers the Governor to make rules for recruitment of the staff. But such rules cannot be inconsistent with the previsions of the Constitution. To provide in the rules that the Board's recommendation shall be binding on the Governor is to make the Board an appointing authority. Such a provisions would not be consistent with the Constitution. Sub-rule (3) of rule 8 has, therefore, been omitted.

4. Rule 11.- It is not necessary to prescribe in the Rules the scales of pay etc. of the Personal Assistants. Orders regarding their pay etc. can be passed under Rule 13.

Id/- [illegible]
dt/- 28/3/

Secretary to Government.

U.R. to P. & S.D. No. 5041 , dated the 29th March 1951.

[illegible]

OFFICE OF THE R.L.A.

The draft regulations at pages 131 to 137 ante as slightly amended appear to be in order.

2. Item 14 in the draft Schedule to the regulations as originally propcsed by the P. & S. D. was as follows, Namely :-

"President And members of the Industrial Court, Bombay."

In the linked papers below dicision has been reached to exclude the post of the President of the Industrial Court from the purview of the Public Service Commission only in so far as the appointment to the post of the President is made from among the active or retired judges of the High Court, Item 14 has accordingly been amended . It is presumed that it is not intended to exclude the members of the Industrial Court from the purview of the Commission.

3. Clause (5) of article 320 requires the regulations to be laid before each House of the Legislature of the State as soon as possible after they are made. Under this clause, regulations which are required to be placed before each House are the regulations as finally made and issued. As proeposed by the P. & S.D. the regulations as finally made should be first notified and then placed before the Legislature .

Id/- J.R.D.
dt/- 1/3/

Remembrancer of Legal Affairs.

U.R. to P. & S. D. No. 3949 , dated the 9th March 1951.

Office of the R.L.A.

Any doubts which existed as regards the character of moneys paid by suitors by way of deposits with the High Court which the High Court claimed to hold as a stake-holder is now set at rest by the provisions of Article 284 of the Constitution. In view of these provisions the High Court can be asked to deposit all these moneys into the public account of the State. It would also be possible to ask the High Court to appoint a separate Accountant for the purpose of auditing those funds.

Id/- G.R.D.
dt/- 2/3/

Remembrancer of Legal Affairs.

U.R. to F.D. No. 3817 dated the 7th March 1951.

V.V.K. 9/7/56/

5C.

Legal Department .
R.I. No. 7240 dated 11-4-51.

Id/-
dt/- 4-51

J.S. It is proposed by the High Court in these
D.S. papers to amend paragraph 7 of Chapter XXII of the Civil Manual , 1950 Vol. I with a view to making provision for the disposal of attached and certain other properties lying unclaimed for in courts for a long time.

There does not seem any legal objection to the amendment propos ed by the High Court at pp. 3-4 ante. The papers may, therefore, be seen and returned.

Id/- ~~H.K.D.~~
dt/- 12/4/

D.S. Id/-
dt/- 12/4/

R.L.A. Id/- J.R.D.
dt/- 13/4/

U.R. to F.D. No. 6195 , dt. 17th April 1951.

V.V.K. 9/7/56/

5C.

Legal Department.

A revised draft ~~xix~~ notification is sent herewith.

Id/- J.R.D.
dt/- 17/4/51/

Secretary to Government.

U.R. to P. & S.D. No. 6340 , dated the 20th ~~xxxx~~ April 1951.

V.V.K. 9/7/56/

5C.

NOTIFICATION.

Political and Services Department,
Bombay Castle, April 1951.

No. 1581/34.- In exercide of the powers conferred by the proviso to article 309 of the Constitution of India , the Governor of Bombay is pleased to ~~amend~~ amend the Bombay Civil Services Conduct, Discipline and Appeal Rules , as follows, namely :-

After Note 5 below sub-rule (1) of rule 34 of the said rules, the following new 'Note ' shall be inserted, namely :-

"Note 6: The District Magistrates shall have power to impose the penalties referred to in rule 33 other than the penalties of dismissal and removal on the following officers in the Rationing Department working under thier control, namely :-

1. Rationing Officers, 2 Assistant Rationing Officers,

3. Chief Rationing Isnspector (Ist Grade) , 4 Office Superintendent. "

By order of the Governor of Bombay ,

Chief Secretary to the Government of Bombay , Political and Services Department.

V.V.K. 9/7/56/

5C.

Office of the R.L.A.

In place of the draft rules at pages ~~xx~~ 9 to 12/C revised draft rules are sent herewith .

2. Draft rule 3(2' at page 9 of the Correspondence section In the present Bombay Legislative Assembly there is only one representative of the backward tribes. Until the forthcoming general elections are over and sufficient number of representatites of the Scheduled Trives are elected for the Assembly the seats intended for these representatives can be filled by other members of the Tribes under the proviso to paragraph 4 of part B of ~~xxxxxxxxx~~ the Fifth Secheule to the Constitution. Suitable provisions have accordingly been made in revised draft rules 3 and 4.-

3. Draft rule 5 at page 10/C.- Sub -rule (1) wh ich reproduces sub-para (2' of para 4 of the Part B of the Fifth ~~xxxxxxx~~ Schedule of the Constitution is unnecessary .The Council cannot be given intiative as proposed in sub-rule (2) . The duby of the Council is to give advice on such matters as may be referred to it by the Governor for advice. Sub-rule (2' therefore is not in order. Both the sub-rules are accordingly deleted

4. Draft rule 6(5) at page 11/C: Sub-rule (5) is not in order for the same reasons as in the case of sub-rule (2) of the Department 's draft rule 5. It has, therefore, been deleted.

5. Draft rule 7 at page 12/C: It is inconsistent with the provisions of clause (9) of draft rule 6. Moreover, the Council being an advisory body it would not be feasible to give publicity to its proceedings until they are approved by Government - The draft rule has, therefore, been deleted.

Id/-
dt/- 24/4/

Remembrancer of Legal Affairs.

U.R. to E.D. No. 6661 , dated the 26th April 1951.

V.V.K. 9/7/56/

5C.

Legal Department.

As regards the position of Parliamentary Secretaries, their duties and finctions, attention is invited to the note recorded by Shri Roger Lumley, the then Governor of Bombay, in which he has given a complete picture of the system of Parliamentary Secretaries obtaining in U.K. Sir Ivor Jennings in his book "The British Constitution " (Third edition, 1950) , while dealing with the subject of ' Administration has observed as follows :-

" In some Departments the Parliamentary Secrrary exercises some of the functions which would normally be exercised by the Minister , either because there is a traditional allocation (as with the Financial Secretaries to the War Office and the Admiralty) or because the Minister specially delegates certain of his functions (as Mr. Lloyd George delegated to Mr. Addison When he was Minister of Munitions). Generally speaking, however, the Parliamentary Secretary's functions are parliamentary, and inside the Department he is concerned partly to advise himself about the many problems which may arise in Parliament and partly to assist generally by commenting on documents and attending committee meetings. He has also pointed out that in 1949 the Cabinet contained se enteen Ministers and outside the Cabinet were fifteen "Ministers of Cabinet rank " as well as forty one Parliamentary Secretaries .

Canada.

In Canada , the institution of Parliamentary assistantships was introduced with a view to meeting demands for sectional represnetation . Mr. Mackenzie King had stated in 1935 that Prince Edward Island would receive a parliamentar-

Secretary as its representative in the Government, and when these new officers were created some years later, the pledge was honoured. Attention in this respect is invited to the observations at p- 207 , of Dawson's "The Government of Canada ". The greater use of members of the House as parliamentary assistants to certain Ministers would do much to relieve the work of their seniors, and it would incidentally also make it easier to reduce the number of those in the Cabibet proper. The British Parliament has been using Parliamentary Under Secretaries on a liberal scale for many years and it has been repeatedly recommended that Canada adopt them . Only recently have they been used in Canada in any appreciable number . The second world war provided the neeessary pressure, and in 1943 , no less than 10 Parliamentary Assistants were mentioned in the estimates, seven of whom were actually appointed. This number later dropped to five, and then to four. The case for continuance and more extensive use of Parliamentary Secretaries is overwhelming.

Advantages.

The assistantships make possible through a greater consolidation of departments, a desirable reduction in the number of members in the Cabinet, they allow the Prime Minister to give more equitable and wider representation to various Provinces ; they furnish the finest training for young promising members who aspire to cabinet positions.

Duties of Parliamentary Secretary in Canada.

V.V.K. 9/7/56/ 5C. Mr. Mackenzie King has outlined in some

detail the many ways in which the assistant can discharge his primary function of lightening the load of his Ministers.

The duties of Assistants to Ministers would be to assist the Minister in Parliament, to answer questions,- not all questions- and also to take part in departmental debates so that the House may be given further information in regard to some matters than it otherwise would. To assist in the explanation of the estimates. Occasions may be conceived when an assistant might relieve the Minister entirely of a large part of the explanation of the estimates. To appear before House Committees on behalf of the Minister, participate in interdepartmental committees on behalf of the Minister, to keep the House it self informed more promptly on matters which may arise in the course of debates, to assist in the planning of some of the post war work of the Government which will have to be done under the direction of the Minister. Also to receive deputations- the Ministers are baset with deputations.- they cannot possibly see many of them. An assistnt could see them and be able to be of real assistance in seeing that their representations were carefully considered. Then there is the matter of a link with members of Parliament - An assistant will be mixing with members generally and will be ab-le to bring to the Minister many matters that otherwise could not possibly be brought to his attention. Then there is deputazing for the Minister on different occasions, fulfilling specific duties. The duties willof course

very between one Department and another, one Minister may wish his assistant to perform certain duties and another other du'ies. Then there is the signing of on behalf of the Minister of many documents that otherwise would require his signature.There is the supervision of officials in some branched where an assistant minister can be of great help. The assistant can also be of great help in regard to out side engagements as will as engagements inside the House -Almost anyservice that will help relieve the Minister of a burden and give the House of Commons and the public more information with r egard to public business is a kind of position which a parliamentary assistant will be expected to fill.

Since the post of Parliamentary assistants has not been given any statutory basis, the assistants have been used in Caaada by Ministers in varying extent.

The position of parliamentary assistants materially differs in Canada from that of a parliamentary Under Secretary in U.K. in that the latter forms part of Ministry and this circumstance naturally adds to the prestige and ehhances the desirability of the position; whereas in Canada a Parliamentary assistant does not enjoy any such position.

Irland.

In ~~Irland~~ Irland the posts of Parliamentary Secretaries have been given statutory recogiition by the Ministers and Secretaries Act (No 16 of 1924.) The number of Parliamentary Secretaries has been limited to seven. The Act also provides for fixing the scale of the-ir remuneration . **

The Irish Free State provides also for five non-Cabinet Minister as a maximum, and seven Parliamentary Secretaries. Each non-Cabinet Minister may have such a Secretary if resolved by the Chamber. It is however provided that not more than fifteen Ministers and Secretaries can be paid.

Australia

In Australia, it has been the practice to appoint one or more "honorary Ministers" in addition to the Ministers of State. There is, however, no provision in the Constitution of Australia to make such appointments.

Newfoundland

In Newfoundland, as in certain of the Provinces of Canada there is a fondness for making up the Cabinet by the use of honorary Ministers.

The note prepared by Sir Roger Lumley contains the information regarding the status and duties of Parliamentary Secretaries in Great Britain. In other countries the system of Parliamentary Secretaries or honorary Ministers prevails. But except in Canada, it is difficult to state defintely what their position is or duties are. In the United States of America, Secretariats who are in the position of Ministers are not the members of the Legislature. There is a complete apperation between the Legislature and Executive.

Id/-
dt/- 12/3/

Secretary to Government.

U.R. to P. & S.D. No. 4090, dated the 12th March 1951.

V.V.K. 9/7/56/

5C.

Office of the R.L.A.

Although from the strict legal point of view, it would be open to Government not to approve the consolidated rules, it would ~~xxx~~ not be proper to do so, as Government had already approved rule 2A. The matter is, however, for H.D. to consider. Perhaps the better thing would be to bring the present views of Government to the notice of the High Court and to suggest to the High Court to reconsider the matter.

Id/- J.R.D.
dt/- 24/9/

Remembrancer of Legal Affairs.

U.R. to H.D. No. 15327, dated the 25th September 1951.

V.V.K. 9/7/56/

5C.

Office of the R.L.A.

The proposal of the Government of India is to amend section 527 of the Criminal Procedure Code empowering the Supreme Court to transfer cases from one High Court to another . This proposal falls under entry No. 2 in List III in the Seventh Schedule to the Constitution 'Criminal Procedure' and the Parliament is competent to make the amendment under article 246(2) of the Constitution. It is immaterial that such amendment affects incidentally the powers of the State Legislature relating to the administration of justice. The proposal of the Government of India is in consonance with the directive principle in article 50 relating to the separation of judiciary and executive and also with the policy adopted by the Bombay State in passing the Separation of Judicial and Executive Funtions Act. As it affects the jurisdiction of the Supreme Court, the Parliament alone is competent to make the amendment.

Id/- J.R.D.
dt/- 17/12/

Remembrancer of Legal Affairs.

U.R. to H.D. No. 20103 dated the 17th December 1951.

V.V.K. 9/7/56/

5C.